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Evgeni Georgiev

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Independence of Bulgarian Judges

BY JUDGE EVGENI GEORGIEV*

I. Introduction

It is believed that the primary purpose of judicial adjudication is to restore social peace through settling conflicts.¹ Courts are entrusted, therefore, with great powers and must guarantee that they use them justly, although this may depend on the personality of the judge.² To this end, it is critical that judges be independent and impartial in resolving conflicts, otherwise they will create conflicts themselves. However, there is concern that judges could have their independence influenced by feelings and perceptions, as they are only human. The intensity of those feelings and perceptions depend on the personality of the judge, but also on the environment in which she works. This material looks for an answer to the question of whether Bulgarian Judges have reached a level of independence in the last twenty-five years (since the fall of the Communist Regime), by examining the type of people appointed to become judges, as well as the procedure for that appointment and the methods the Bulgarian Justice System uses to assure its judges are independent.

* Mr. Georgiev currently sits on the Regional Court of Sofia and was the first judge to implement mediation techniques in the courtroom. His pioneering support of mediation led to the establishment of a court-connected settlement center, the first of its kind in Bulgaria.

1. JOHN P. DAWSON, *THE ORACLES OF THE LAW* XIII (Greenwood Press 1968).

2. See Benjamin N. Cardozo, *The Nature of the Judicial Process, Lecture I. Introduction. The Method of Philosophy*, 1 J. OF L. 329, 332-33 (2011) (discussing importance of the court's responsibility).

II. Brief Historical Overview of the Bulgarian Justice System

The Bulgarian state is considered to be established in its present geographic position in South Eastern Europe in 681 AD.³ The first sources regarding the administration of justice in Bulgaria can be traced in the Responses of Pope Saint Nikolas I to Questions of the Bulgarians from 866 AD.⁴ Around the same period, the first written Bulgarian law was adopted.⁵ However, starting in 1396 and until 1878, Ottoman rule interrupted the Bulgarian state tradition. For centuries, the Ottoman Empire used a system of Islamic courts, which underwent court reform following the French model from 1864 on.⁶ Before and after the modernization, local communities, craftsman organizations, and religious groups were granted the right to have courts, with nonprofessional judges elected by the communities they served, that applied customary law to resolve every day simple disputes.⁷ It was not uncommon for Bulgarians to refer their disputes to local courts for the sake of convenience – instead of requesting to use official Ottoman courts⁸ which were expensive and untrustworthy.⁹

After the Russian-Turkish War from 1877-1878 and the Berlin Treaty of 1878 that followed, the present Bulgarian state was established as the Principality of Bulgaria.¹⁰ While the institutions of the new state were forming, Russian officials administered the

3. *Bulgaria*, Wikipedia, <http://en.wikipedia.org/wiki/Bulgaria>, (last visited Oct. 8, 2015).

4. Dimitar Tokushev, *Sudebnata Vlast v Bulgaria*, 21-22 (Sibi 2003).

5. *The Ecloga Itself Was Based on the Justinian Code. Ecloga: Byzantine Law*, Encyclopedia Britannica, Inc., <http://www.britannica.com/EBchecked/topic/178179/Ecloga>, (last visited Oct. 8, 2015).

6. See Avi Rubin, *Legal Borrowing and Its Impact on Ottoman Legal Culture in the Late Nineteenth Century*, 22 CONTINUITY AND CHANGE 279, 279-303 (2007) (discussing the Ottoman Empire's court system).

7. TOKUSHEV, SYDEBNATA VLAST V BULGARIA, 67-83 (Sibi, 2003).

8. See Jani Kirov, *Foreign Law Between "Grand Hazard" and Great Irritation: The Bulgarian Experience After 1878*, 10 THEORETICAL INQUIRIES IN LAW 699, 710 (2009).

9. See TOKUSHEV, SYDEBNATA VLAST V. BULGARIA, 69 (Sibi, 2003) citing STEFAN BOBCEV, BULGARSKO OBICHAJNO SUDEBNO PRAVO, SBORNIK NARODNI UMOTVORENIA I NAUKA, VOL. 37, 15 (1927).

10. *Principality of Bulgaria*, Wikipedia, http://en.wikipedia.org/wiki/Principality_of_Bulgaria, (last visited Oct. 8, 2015).

country for about a year – aiming to build a court system on local traditions allowing fair participation of the Christian population in administering justice. The local courts were preserved and a modern court system was designed and developed resembling the Ottoman system, which had three levels: trial courts, intermediate courts of appeal, and a Supreme Court.¹¹ Once the national Bulgarian institutions were established, a fast pace reception of foreign law began in an effort to modernize the country.¹²

Problems with the courts appeared soon after their composition. The majority of the problems were related to judges' competence,¹³ insufficient funding,¹⁴ inefficiency,¹⁵ and corruption based on political influence,¹⁶ as well as bribery.¹⁷ The government took action to deal with these problems and by the 1940s the courts were more independent and better staffed.¹⁸

11. TOKUSHEV, SYDEBNATA VLAST V BULGARIA, 132-154 (Sibi, 2003).

12. Kirov, *supra* note 8, at 714.

13. In 1880-1881 there were seven Justices at the Supreme Court but only three of them had legal education (Stefan Bobchev, *Iz Spomenite na Edin Star Magistrat*, 34 JURIDICHESKI PREGLED 4-5, 151 (1933).) In 1887 throughout the country there were altogether 341 judges, prosecutors and their assistants, investigators, and justices of the peace from which only sixty-seven had legal education (Tokushev, *Sudebnata Vlast v Bulgaria* at 181 citing *Doklad na Negovo Velichestvo Bulgarskia Knjaz Ferdinand I ot Ministerskia Syvet*, 341 (1907).) *See also* T. Hinkov, *Uredbata v Nashite Sudilista*, 12 JURIDICHESKI PREGLED 7, 333-340 (1901).

14. For the poor conditions the trial court in Orhanie (Botevgrad) operated in 1878 *see* Toma Vasiljov, *Pyrvata Sudebna Vlast v Novoosvobodena Bulgaria*, 30 JURIDICHESKI PREGLED 1, 29-32 (1929.) For the insufficient payment of judges *see* Ivan Brunevov, *Dostatuchen li e Systavyt na sudiite*, 12 JURIDICHESKI PREGLED 3, 153 (1901). The latter author criticized that judges' payment was lower than those of teachers, bank clerks, and army officers. *See also* V. Domuschiev, *Slabata Dejatelnost i Nezainteresovanost na Nashite Magistrati kym Razvitiето na Pravната Nauka*, 16 JURIDICHESKI PREGLED 1, 34-37 (1905.) For a table comparing judges' payments to those of other governmental employees *see* Tedemir, *Neduzi v Pravosudieto*, 16 JURIDICHESKI PREGLED 6, 366-367 (1905).

15. Domuschiev, 16 JURIDICHESKI PREGLED at 35.

16. *See* Hinkov, 12 JURIDICHESKI PREGLED 7, 333-34 (“[i]n any local and district court the one with the political power was running the court on his own will.”).

17. *See* Domuschiev, 16 JURIDICHESKI PREGLED 1 at 37. (The author shared about the existence of “for-profit teams composed of attorneys and justices of the peace” to compensate the low payment of judges).

18. In 1892 the Law School at Sofia University was established. In December 1898 judges were granted tenure upon meeting some requirements (*See* Stefan Bobchev, *Za Nesmenjaemostta na Sudiite*, 9 JURIDICHESKI PREGLED 9, 449-452 (1901).) Concerning judges tenure before 1944 *See* Evgeni Yochev, *Turnovskata Konstitucia i Nesmenjaemostta na Sudiite*, JURIDICHESKI PREGLED 1 (2009); Evgeni Yochev, *Liberalnijat Model na Nesmenjaemostta na Sudiite*, PRAVNA MISUL 4 (2009); Evgeni Yochev, *Zakonodatelno Urejdane na Principa na Nesmenjaemostta na Sudiite ot Pravitelstvoto na Narodnata*

In the fall of 1944, the Communist Regime in Bulgaria took drastic actions to secure its power using large-scale terror against the population¹⁹ and the judiciary.²⁰ By 1950, about 50% of the judges who had been recruited before 1944 were dismissed.²¹ On paper, the justice system may have looked independent but how it operated on certain cases reveals the pervasive political corruption. Such was the case in *Texim*.

In mid-April 1971 Ilija Bajchev, the Chief Judge of the Sofia City Court, was called to appear before the Administrative Department of the Central Committee of the Communist Party. He was told that it was decided that he would preside over the panel hearing the *Texim* case and the case should be adjudicated abiding by the law.²² (*Texim* was a Bulgarian economic group operated until 1969²³ when ten of its executives were indicted for economic crimes.) Both before and during the trial, Chief Judge Bajchev was asked about his view on the weaknesses of the prosecution by several people: the Minister of Justice, the Chief Justice and the Attorney General, the Head of the Judicial Department on behalf of the Deputy Minister of Justice, and a prosecutor of the Head Prosecutors Office, Justice Menev. Chief Judge Bajchev presided over the panel which found the CEO of *Texim* not guilty. Upon appeal, a three-Justice panel of the Supreme Court, including Justice Menev, reversed the verdict and the indicted parties were imprisoned. Chief Judge Bajchev was “asked” to retire and Justice Menev replaced him

Partija, JURIDICHESKI SVJAT 2 (2008). In 1910 was created the Supreme Judicial Council with significant functions in the initial selection and promotion of judges (Tokushev, *Sudebnata Vlast v Bulgaria* at 191-192; Angel Djambazov, *Pravosudnata Sistema na Bulgaria 1878-1944*, 124-126 (Nauka i Izkustvo 1990); Evgeni Yochev, *Izmenenijata i Dopulnenijata na Zakona za Ustrojstvo na Sudilistata (1910-1911) i Vyzpriemaneto na Evropejskia Model na Sudoustrojstvo*, Juridicheski Svjat 2 (2010).

19. László Karsai, *Crime and Punishment: People's Courts, Revolutionary Legality, and the Hungarian Holocaust*, 4 INTERMARIUM 1, 6 (2000-2001), <http://ece.columbia.edu/files/ece/images/karsai2.pdf> (last visited Oct. 8, 2015).

20. Three former Ministers of Justice were sentenced to death. Indicted and convicted were the former Attorney General, the former Chief Justice of the Marshal Court of Cassation, justices and prosecutors of the Supreme Court of Cassation, judges and prosecutors of the Marshal Courts, judges of regular district and appeals courts (Tokushev, *Sudebnata Vlast v Bulgaria* at 295-296).

21. See Tokushev, *Sudebnata Vlast v Bulgaria* at 298.

22. Ilija Bajchev, *Sudeben Proces ili Fars*. Pametni Belejki, 15.

23. *Georgi Naydenov*, Wikipedia, http://en.wikipedia.org/wiki/Georgi_Naydenov, (last visited Oct. 8, 2015).

as Chief Judge of the Sofia City Court.²⁴

This was the judicial cultural legacy on which Bulgaria has built its Justice System since the fall of the Communist Regime.²⁵ The organization of courts which existed during the Communist time – one level review of trial judgments, three levels of courts (regional, district, and Supreme Court) – was amended during the 1990s to provide for two levels of review and as a result, five intermediate courts of appeal were created. At present, regional courts are trial courts with limited jurisdiction;²⁶ district courts are both trial courts with general jurisdiction and courts of appeals for regional courts;²⁷ courts of appeal review district courts, whereas the Supreme Court of Cassation reviews courts of appeals.²⁸ A separate tier of administrative courts has been also created.

III. Factors That May Affect Judges' Independence

Before inquiring what can influence a judge in performing her judicial functions and how those influences can be limited, it would be beneficial to clarify what is the job of a judge. Professor Geoffrey Hazard and Professor Angelo Dondi answer in *Legal Ethics. A Comparative Study* that, “[a] conscientious judge aims at deciding a controversy according to the most accurate practicable assessment of the facts and most technically accurate conception of the law.”²⁹ To do this successfully, a judge needs to have a clear and uninfluenced mind. Five years ago, a very good friend of mine, a retired Portuguese judge with over forty years of experience during and after Salazar’s regime, shared with me his view that independence is a state of mind of the individual. Starting from this point – independence is a state of mind – pragmatic analyses could help to

24. *Id.* at 19, 20, 44, 39, 52-54.

25. For a balanced view on the Bulgarian Justice System in 1980s, see Pencho Penev, *Sudebnata Vlast v Bulgaria 1989-2014. Problemi na Syvremennia Diskurs*, 47-70 (Sibi 2014).

26. Judicial System Act [JSA], State Gazette [SG] No. 69/2008 art. 76 (Bulg.); Code of Civ. Proc. State Gazette [SG] No. 69/2008, art. 103 (Bulg.).

27. JSA, SG No. 69/2008, art. 82-83 (Bulg.); Code of Civ. Proc. SG No. 69/2008, art. 105 (Bulg.).

28. JSA, SG No. 69/2008, art. 101(1), 108(1) (Bulg.).

29. GEOFFREY C. HAZARD & ANGELA DONDI, *LEGAL ETHICS: A COMPARATIVE STUDY* 64 (Stanford University Press 2004).

identify what can affect the clear mind of a judge deciding a case.

If independence is a state of mind, it can be affected by feelings and perceptions that often depend on personality and experience. Feelings and perceptions, however, can be triggered also by factors outside the person, such as behavior patterns within the community and outside pressures and incentives. Some of the feelings that can influence our minds can be fear, allegiance, frustration, insecurity, or anger. Perceptions might be thwarted by failures of the character such as vanity, laziness, and greed.

To a great extent a judge's ability to keep her mind clear while deciding a case depends on her personal ability to cope with feelings and perceptions that could influence her mind. It is very critical, therefore, that the justice system recruit judges that have that ability. Keeping a judge's mind clear also depends on the will and the ability of the justice system to help judges successfully cope with those feelings and perceptions.³⁰ From this, it can be inferred that to have, clear-minded judges, a justice system should be able to have a vision and policy applied to it.

How and what kind of judges are recruited? How can a system make sure its judges feel unaffected by feelings and perceptions that can influence their decisions, while fulfilling their judicial duties? The following chapter will discuss what Bulgaria has done in these areas in the last twenty-five years since the fall of the Communist Regime.

30. For similar analysis *see also* RICHARD A. POSNER, *HOW JUDGES THINK* 11 (Harvard University Press 2008).

IV. What Has Been Done in Bulgaria to Ensure Independent Judges

A. How and What Kind of Judges are Recruited

1. Who Recruits Judges

The Supreme Judicial Council (Council) is responsible for the initial selection and appointment of judges.³¹ It is also responsible for judges' promotions, professional development, and disciplining.³² How the Council is composed and how it operates, therefore, is crucial to providing for an independent Judiciary.

a. How the Council is Composed

The Council has twenty-five members: eleven elected by Separate General Assemblies of Judges³³ – Prosecutors and Investigators;³⁴ eleven elected by the Parliament;³⁵ the Chief Justice of the Supreme Court of Cassation, the Chief Justice of the Supreme Administrative Court, and the Attorney General – ex officio members of the Council.³⁶ The nomination and selection procedure for members of the Council was initially regulated by the Supreme Judicial Council Act from 1991, and later by the Judicial System Act (JSA) from 1994 and from 2007. Until the 2011-2012 amendments of the JSA, the candidates for members of the Council were nominated at the date when either the Professional General Assemblies or the Parliament voted for them. This left no time for any screening or challenge to be brought regarding the candidates' qualifications or integrity.³⁷ As a result, not only was there a lot of

31. Const. of the Republic of Bulg. SG No. 12/ 2007, art. 129(1); JSA, SG No. 69/2008 art. 16(1).

32. Const. of the Republic of Bulg. SG No. 12/2007, arts. 130(6), 2-3.

33. JSA, SG No. 69/2008, art. 17(3) (Bulg.).

34. The three Professional General Assemblies are composed of: judges, representatives of each court; prosecutors, representatives of each prosecutor's office; and investigators, representatives of each investigator's office. Those representatives are elected by the judges, prosecutors, or investigators from the institution they represent.

35. Const. of the Republic of Bulg. SG No. 12/2007, art. 130(1).

36. *Id.*

37. *Election of the Members of the Supreme Judicial Council: Hearings*, (Jan. 22,

room for behind the scene deals for nominations and election for members of the Council, but the procedure also allowed professionals with questionable integrity to be elected. This sometimes led to controversial appointments and promotions of judges;³⁸ leading to feelings of underrepresentation and a lack of trust in the Council.

The 2011-2012 amendments of the JSA implemented detailed procedures for electing members of the Council, both from the Parliament and the professional quota (judges, prosecutors, and investigators). Those procedures required: (1) early nominations to be well reasoned; (2) disclosure of financial status; (3) written concepts of the candidates; (4) public hearings before a special committee and the whole Parliament, as well as, before the Professional General Assemblies including answering the questions of nongovernmental organizations, (5) research and educational institutions; and (6) public report of the special selection committee of the Parliament for each nomination of its quota.³⁹ Along with these improvements, the number of the representatives at the Professional General Assemblies was increased⁴⁰ as a step to direct elections. Although the amendments provided for greater involvement of the professional community in the elections, as well as increased transparency and publicity, the feeling of “behind the scene deals” continues to exist. This is not unsurprising given the long history of corrupt procedures.⁴¹

1992), <http://www.parliament.bg/bg/plenaryst/ns/4/ID/2335> (last visited Oct. 8, 2015).

38. *Judicial Reform Index for Bulgaria*, 3 ABA CELLI 14, 19 (2006) (discussing the appointments of judges).

39. JSA, SG No. 69/2008, as amended SG 1/2011 and SG 50/2012, art. 19 (Bulg.); JSA, SG No. 69/2008, as amended SG 50/2012 and SG 50/2012, arts. 19(a)- 24 (Bulg.).

40. *Compare* JSA, as amended SG No. 50/2012, art. 20(3) (Bulg.), *with* JSA, SG No. 50/2012, art. 20(1), (Bulg.).

41. Scandals cherish this feeling: on June 28, 2013, in the media leaked phone conversations among Chief Prosecutors of several prosecutors' offices who were discussing assuring support through the representatives of the institutions they ran to the Prosecutors General Assembly for having Kamen Sitnitski, former Deputy Attorney General, elected as a member of the Council (*see* Galina Gerginova, *Prokuraturata Protestira Uvolnenieto na Kamen Sitnitski*, *Sudebni Reportaji* (July 21, 2014)) <http://judicialreports.bg/2014/07/прокуратурата-протестира-от-мяната-н/> (last visited Oct. 8, 2015).

b. How the Council Operates

Initially, the Council only had meetings at least once every three months, but with time it became more active in appointing, promoting, and disciplining judges, prosecutors, and investigators, and therefore required more operational capacity. Thus, ever since 2007, the Council has been meeting at least once a week⁴² and its member's work only for the Council. Initially, the Council depended on the Ministry of Justice administratively,⁴³ later on, however, the Council secured its own small, but growing administration. Its number was first limited to not higher than two and a half, then to not more than three times the number of the members of the Council. However, in 2011 the limitation was lifted⁴⁴ and now it has about 120 people in the administration. Concerns about the bureaucratization of the Council, resulting in detachment of the professional groups it works for, and inability to attract well-qualified professionals, have provoked debates whether to implement changes that would allow most of the commissions of the Council to work on sessions and only have a few permanent members.⁴⁵

2. How Judges Are Recruited

The question how to recruit judges is at least twofold. On the one hand, the criteria the candidates for judgeships need to meet, along with the professional path for entering Judiciary, are important. On the other hand, it is, if not more critical, at least as critical who applies the selection criteria and how they do it.

42. JSA, SG No. 69/2008, art. 33(1) (Bulg.).

43. JSA, SG No. 59/1994, art. 25 (Bulg.).

44. Compare JSA, SG No. 1/2011, art. 30(3) as amended, with JSA, SG No. 33/2009, art. 30(3) & JSA, SG No. 64/2007, art. 30(3).

45. *Aktualizirana Strategia za Produljavane na Reformata v Sudebnata Sistema*, 3 (2014) (Updated Strategy for Continuing the Reform in the Justice System) http://mjs.bg/Files/Проект_на_Актуализирана_стратегия_за_съдебна_реформа_635489116277892922.pdf (last visited Oct. 8, 2015).

a. Criteria Applied in Recruiting Judges

Since the 1990s and until present, the criteria for judgeship the candidates has been remarkably stable. The requirements concern candidates' legal competence, integrity, and mental health.⁴⁶ The legal competence requirement is determined by the quality of legal education, professional training required upon graduation, and the exam for entering the legal profession – all of which, however, suffer serious deficiencies.

Bulgarian legal education, at least at Sofia University Law School, is generally perceived as having an efficient and well-structured theoretical component.⁴⁷ That idea is archaic, however. Actual case study is rare, and the Socratic Method of teaching is even less common; lectures before large audiences are the rule. Legal research and writing does not exist in the law school curriculum and trial advocacy and legal ethics might be taught only on an occasional basis by U.S. visiting professors. Students try to compensate for the lack of practical training at law schools by participating in extracurricular moot courts and clinics (when available), getting jobs at law firms (for little to no compensation), and interning for judges, which might be challenging to get.⁴⁸

There is a six-month professional training requirement⁴⁹ upon the completion of legal studies.⁵⁰ Students are not compensated for their work during the training.⁵¹ Most often the training is a mere formality due to its short period⁵² and its timing. To break this

46. JSA, SG No. 69/2008, art.162 (6) (Bulg.).

47. *Legal Education: Problematic Areas and Perspectives*, 1 BILI 1, 9 (2009) (discussing Bulgarian legal education).

48. *Judicial Reform Index for Bulgaria*, 1 ABA CEELI 1, 8 (2002); *Judicial Reform Index for Bulgaria*, 2 ABA CEELI 1, 6 (2004); *Judicial Reform Index*, *supra* note 39, at 15; *Judicial Reform Review for Bulgaria*, 4 BILI 1, 18 (2013); *Legal Profession Reform Index for Bulgaria*, 1 ABA CEELI 1, 19-20 (2004); *The Legal Profession Reform Index*, 2 ABA CEELI 1, 25 (2006); *Legal Education: Problematic Areas and Perspectives*, *supra* note 48 at 9 <http://www.bili-bg.org/11/page.html>.

49. In the last twenty years this period has ranged from three months to one year.

50. JSA, SG No. 69/2008, art. 294(1) (Bulg.).

51. *Id.* art. 297(2).

52. The time of the training is dispersed among five institutions leaving a little bit more than a month for each one of them. This period is so short that students could hardly gain some meaningful practical experience with the institution they work with. More fundamentally, given that at the beginning of the training most students have no practical

vicious cycle, at least some institutions have started to implement longer internship programs.⁵³ There is also an exam upon the completion of professional training, which is supposed to check both theoretical knowledge and practical skills of law students.⁵⁴ In reality, it is just a lighter version of the final exams at the end of law school, with no practical component and a very low failure rate. All of this results in inadequate entry-level legal competence for Bulgarian judges. This might be a source of uncertainty that could lead to failures in the decision-making process, sloppiness, and delay, all of which can influence a judge's clear mind. The system tries to ameliorate these effects through judges' initial training.

The integrity criteria requires judicial candidates to: (1) not have been convicted of a felony; (2) possess the moral and professional standing required by the Code of Ethical Conduct of Bulgarian Magistrates (the Code of Ethical Conduct); and (3) not have been an elected member of the Council who has been disciplinary dismissed for compromising the reputation of the Judiciary.⁵⁵ It took some time not only for the Code of Ethical Conduct to be adopted, but also for judges to realize the need for such Code.⁵⁶ Initially, the Union of Judges in Bulgaria (the first association of judges) adopted basic ethical rules to be abided by its members. These rules were approved in 2004 by the Council to apply to all judges.⁵⁷ In 2009, the Council adopted the Code of Ethical Conduct developing in detail seven principles – independence, impartiality, justice and transparency, courtesy and tolerance, honor and propriety, competence and qualification, and confidentiality.⁵⁸

legal skills and the short time of the training, judges could not rely on real help by students. If judges are busy, which is the case in metropolitan areas, the combined result of their heavy dockets and no real help from students is lower motivation of judges to work with students.

53. *Regional Court of Sofia*, (Oct. 8, 2015), http://www.srs.justice.bg/161-Стажантска_програмa; *The Law School of the University of National and World Economy*, (Oct. 8, 2015), <http://faculties.unwe.bg/law/bg/pages/77>; *Bulgarian Judicial Association*, (Oct. 8, 2015), <http://www.judges.bg/bg/activities/students/rules>.

54. JSA, SG No. 69/ 2008, art. 294 (2) (Bulg.).

55. *Id.* arts. 162(3)-(5) (Bulg.).

56. *Judicial Reform Index for Bulgaria*, *supra* note 49 at 38 (2002).

57. *See Judicial Reform Index for Bulgaria*, *supra* note 49 at 32 (2004).

58. Code of Ethics for the Behaviour of Bulgarian Magistrates (May 20, 2009), http://www.vss.justice.bg/en/root/f/upload/5/judicial_system_code_of_ethics_eng.pdf.

b. Professional Paths for Entering the Judiciary

The selection criteria for judges, and to whom they apply, go hand in hand with the search for good and independent judges. To whom the criteria are applied, depends on the professional path to becoming a judge, which in turn determines what kind of judges the system will have, how they will behave, and how they will perform their duties. Understanding how the professional path chosen to become a judge influences a judge's performance would allow a justice system to ameliorate the side effects of the applied model of the professional path for becoming a judge in the given country.

There are two professional paths for becoming a judge in Bulgaria – the junior judge's path and the so-called "initial appointment." The majority of judges follow the junior judge's path. It allows for law graduates, upon completing their professional training, without other prior legal experience required, to become junior judges at district courts. For a certain time before being appointed to regional courts, they work in a panel with two senior judges having equal decisional power.⁵⁹ The "initial appointment" allows legal professionals to become judges at any court level – if they have a certain prior legal experience.⁶⁰ The higher the position applied for, the more experience is required.⁶¹ "Initial appointment" is applied to only 20% of the vacant judgeships so the career development of judges in lower courts is not hindered.⁶²

There is no study on how the professional path for becoming a judge impacts the performance and behavior of Bulgarian judges. General and speculative assumptions could be made that the age of junior judges could be both a blessing and a curse. Junior judges might be idealistic, enthusiastic, energetic, devoted, quick learners, open to change; but they could also be, at least initially, less self-confident, easy to manipulate, detached from society, too formal and technical,⁶³ inefficient, and arrogant. The latter failures of

59. JSA, SG No. 69/2008, arts. 181(1), 239(1), 240(1), 243(1) (Bulg.).

60. *Id.* at art. 181(2) (Bulg.).

61. *Id.* at art. 164 (Bulg.).

62. *Id.* at art. 178(1) (Bulg.).

63. Marina Kurkchiyan, *Comparing Legal Cultures: Three Models of Court for Small Civil Cases*, 5 J. COMP. L. 169, 188-190 (2010) (discussing the Bulgarian legal culture and Bulgarian judges' tendency toward appreciation of legal technicalities and strict application

professional character might also demonstrate a professional who has entered the judiciary through the “initial appointment” path. However, because the right selection procedures are applied by a well-composed group of people, these failures are easier to spot – since there is greater information available about the candidate and the information’s sources.

c. Procedure for Selecting Judges and Its Application

Several tendencies of improvement can be traced to the procedures for selecting judges: (i) significantly reducing the role of Chief Judges through implementing initial selection based on a centralized exam; (ii) increasing the transparency of the procedures; and (iii) dividing the selection authority between the Council and exam commissions of five members, with active judges and at least one law professor randomly appointed. The implementation of these improvements was a slow and lengthy process.

Until 2002, when a court had a vacant judgeship, the Chief Judge made a nomination of a prospective candidate. The lack of national standards for selecting candidates⁶⁴ and the lack of reasonable capacity of Council to evaluate the nominees made the appointment a mere formality.⁶⁵ Suspicion existed that many judges were appointed because of family or other connections.⁶⁶ Such system could work if for many years chief judges were always conscientious and sensitive in selecting new judges and thus created deference and trust in the process. Otherwise, it could result in abuses or distrust even when slight changes are made.

At present, vacant judgeships, the selection procedure is publicly announced.⁶⁷ Candidates submit application documents proving their competence, integrity, and mental health, which are

of the law).

64. Very few courts, mainly in larger metropolitan areas such as Sofia and Plovdiv, used exams to select candidates for junior judges’ position.

65. *Judicial Reform Index for Bulgaria*, *supra* note 49 at 9 (2002).

66. *Id.*

67. JSA, SG No. 33/2009, art. 179 (Bulg.); *Pravila za Provejdane na Konkursi za Mladshi Sudii i Mladshi Prokurori, za Purvonachalno Naznachavane i Povishavane v Dlujnost i Premestvane na Sudii, Prokurori i Sledovateli* [Rules for Competitions], (Bulg.), available at http://vss.justice.bg/root/f/upload/8/Pravila_konkursi_ml-10-06-2015.pdf.

reviewed by a Commission of the Council in order to admit them to the exam.⁶⁸ The Council randomly selects judges and law professors as exam commissioners to prepare a written exam based on problem-solving, to administer, and to grade it as well. Additionally, an oral exam is audio recorded for those who pass the written exam. Finally, the candidates are ranked based on their overall exam performance.⁶⁹ The Council appoints the best in the rankings upon receiving the opinion of its Ethical Commission about the integrity of the candidates.⁷⁰

Generally, the exams are accepted as fairly administered; which is one explanation for the high number of candidates,⁷¹ although another explanation could be the increased compensation of judges after 2001 leading to more applicants.⁷² Both written and oral exams mainly screen the technical theoretical legal competence of candidates.⁷³ The process does not allow for the evaluation of the candidates' working habits, skills, or personality⁷⁴ due to the limited sources of information the Council uses about prior observable behavior of the candidates.⁷⁵ It would be fairly safe to generalize, however, the young age of entry-level judges would be problematic in other civil law countries using a similar system of judicial appointments.⁷⁶

68. *Id.* arts. 8-9; JSA, SG No. 1/2011, art. 182(1).

69. JSA, SG No. 1/2011, arts. 182, 183, 184 (Bulg.); JSA, SG No. 33/2009, art. 185 (Bulg.); JSA, SG No. 32/2011, art. 186- 186(a) (Bulg.); Rules for Competitions, *supra* note 70 at art. 10-25.

70. JSA, SG No. 69/2008, arts. 186(a)(4), 186(a)(2) (Bulg.); Rules for Competitions, *supra* note 70 at art. 26-27.

71. *Judicial Reform Index for Bulgaria*, *supra* note 49 at 6 (2004); *Judicial Reform Index for Bulgaria*, *supra* note 39 at 16; *Judicial Reform Review for Bulgaria*, *supra* note 49 at 24.

72. *Infra* IV.B.1.(b).

73. *Judicial Reform Index for Bulgaria*, *supra* note 39, at 16.

74. *Id.*

75. HAZARD & DONDI, *supra* note 30, at 80 (“[b]ecause it is impossible by objective evidence to determine whether a judge is subjectively impartial, legal standards of impartiality necessarily refer to observable behavior.”) (The same test could be applied in initial judicial selection – candidates’ personality to be evaluated based on data about their prior observable behavior.).

76. In Germany, for example, upon completing law school students have two years of paid professional training (see PETER L. MURRAY, ROLF STÜRNER, GERMAN CIVIL JUSTICE, 7-9 (Carolina Academic Press 2005)). A longer professional training allows for better observation of the candidates performance and personality but it is questionable whether

3. Does Judicial Appointment in Bulgaria Provide for Independent Judges?

Allegiance is one of the feelings that can influence judges' independence. The selection process for initial appointment of judges in Bulgaria is well balanced to not allow judges to feel allegiance to those who appoint them since: (i) the candidates' appointment is based solely on their merits – even only technical theoretical knowledge of law, which is a source of self-confidence; (ii) the selection procedure is difficult to be manipulated since the decision is made by several independent bodies; and (iii) the composition and selection of the Council is also a guarantee for judges' independence.

While most excellent students are hardworking, it is unclear whether they will be able to effectively and efficiently carry on the burden of taking decisions all the time. This could be proved only through data about prior observable behavior. The process has no tools to analyze such behavior to identify whether judicial candidates can cope with fear, anger, and vanity that could influence their clear mind in deciding upon a case. The dearth of information about observable behavior could be an excuse for a junior judge's path but not for "initial appointment."

B. How Bulgaria's Justice System Assures Its Judges Are Independent in Fulfilling Their Judicial Duties

In order to have uninfluenced judges, the Bulgarian Justice System provides them with training, a stable office, and career development. In return, the system expects good behavior from judges, otherwise they face the possibility of disciplinary sanctions in breaches of judicial duties.

1. Training, Stable Office, and Career Development

a. Training

During the first ten years upon the fall of the Communist regime, the Bulgarian Justice System did little, if anything, concerning judges training. The Magistrates Training Center was

two years is substantial enough.

established in 1999 to provide initial and continuing legal training to judges,⁷⁷ which in 2003 was transformed into the National Institute of Justice (NIJ).⁷⁸ The NIJ is financed mainly by the Justice System budget and supervised by a board of five representatives of the Council and two of the Minister of Justice.⁷⁹

Presently, the NIJ provides mandatory initial trainings that are practically oriented – nine months for candidates for junior judges⁸⁰ and fifteen days for judges recruited through “initial appointment”⁸¹ – as well as non-mandatory continuing legal education for judges and court staff.⁸² Through senior judges’ mentorship, the NIJ assists and supervises the work of junior judges once they are appointed to district courts.⁸³ It has also started to experiment with offering nonlegal classes in economics, accounting, psychology, media relations, and ethics.⁸⁴ The continuous efforts of the NIJ to improve its operation, and the high motivation and competence of its staff, make it one of the best working institutions of the Bulgarian Justice System. At the moment, however, little attention has been paid to case management techniques and skills – an issue that the NIJ is planning to address.

b. Stable Office

Judges’ stable office generally depends on their compensation, workload, duration of service (tenure), and liability for judicial misconduct (immunity).⁸⁵ Until 2001, judge’s salaries were inadequate and many well-qualified judges left the judiciary to enter

77. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 2.

78. *Judicial Reform Index*, *supra* note 49, at 7.

79. JSA, SG No. 69/2008, arts. 251, 255; JSA, SG No. 69/2008, art. 252, as amended, SG No. 1/2011.

80. JSA, SG No. 69/2008, art. 249(1), 258 (Bulg.)

81. JSA, SG No. 69/2008, art. 259 (Bulg.); *Pravilnik za Organizacijata i Dejnosta na Nacionalnia Institut na Pravosudieto i na Negovata Administracia* [Regulation of the NIJ, SG No. 65/2011, art 40], (Bulg.), <http://www.nij.bg/FileHandler.ashx?folderID=89&fileID=5150>.

82. JSA, SG. 69/2008, art. 258(1)-(2) (Bulg.).

83. *Pravilnik za Organizacijata i Dejnosta na Nacionalnia Institut na Pravosudieto i na Negovata Administracia* [Regulation of the NIJ, art 40], (Bulg.).

84. *Judicial Reform Review for Bulgaria*, *supra* note 49, at 31 (2013).

85. DAWSON, *supra* note 1, at 134-145 (Professor John Dawson illustrated how personal liability for misconduct of judicial office in Medieval Italy resulted in judges’ fear of taking decisions).

private practice.⁸⁶ Then, judges' remunerations started to be increased and a few years later judges felt well compensated and the adequacy and stability of their income led to the opposite trend: attorneys started to apply for judgeships.⁸⁷ Good salaries also attracted more young professionals to the judiciary.⁸⁸

The large differences in salaries of judges in different levels in Bulgaria make faster promotion a lot more attractive.⁸⁹ If the system has a fair and well thought out promotion mechanism, or does not rely on promotion, higher salaries for higher level judges attract more qualified professionals. But the higher salary and prestige might make a not so conscientious judge easily influenced in deciding a case by those her promotion depends on. End-of-year bonuses, when given to Bulgarian judges and depending on their amount, might also influence judges' independence since their distribution is within the absolute discretion of chief judges.

An overworked judge is frustrated and stressed; which cannot but affect her clear mind while deciding a case. Overwork could be due to: (1) higher number of incoming cases than the judge normally can cope with and (2) inability of judges to adjudicate large amounts of cases. Large caseloads in the system and an inadequate number of judges or distribution of cases among them, could contribute to the former. The latter could be due to poor working ethics, little or no case management knowledge and skills, lack of delegation culture, inadequate procedural devices, and procedural culture.

Judges in Bulgaria, except those in the three main metropolitan areas, generally do not feel overworked. The reasons judges in Sofia feel overloaded are not likely due to the insufficient number of judges⁹⁰ or the high numbers of cases filed,⁹¹ but rather, the

86. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 24 (2002).

87. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 20 (2004).

88. *Judicial Reform Index for Bulgaria*, *supra* note 39, at 34 (2006).

89. These are the base monthly salaries for judges from different levels: 876.00 USD for junior judges; 954.00 USD for regional judges; 1,221.00 USD for district judges; 1,486.00 USD for court of appeals judges; 1,768 USD for Justices of the Supreme Court of Cassation. Above their base monthly salary judges receive an extra 2% automatic payment for every year of judicial service but not more than 40% plus extra payment for rank (payment due for certain years of good service upon being positively evaluated.) For more see *1546 lv. e naj-niskata zaplata v suda, 4367 e naj-visokata*, available at <http://www.24chasa.bg/Article.asp?ArticleId=5051642> (last visited Oct. 26, 2016).

90. *Supreme Judicial Council*, (Dec. 31, 2014), <http://www.vss.justice.bg/bg/start.htm>; *Republic of Bulgaria: National Statistical Institute*, (Dec. 31, 2014), <http://www.nsi.bg>

inadequate distribution of judges nationwide,⁹² poor case management skills,⁹³ low working ethics,⁹⁴ and an underdeveloped culture of judges to delegate responsibilities.⁹⁵ While the Council is currently working on establishing a system to objectively evaluate the workload of judges and their proportionate distribution, and the NIJ has implemented trainings for the supporting staff which will hopefully increase judges' reliance on it, little has been done to improve judges' management skills.

Tenure and immunity are also critical for judges' independence. Under the Constitution, initially judges automatically acquired tenure upon three years of judicial service until the retirement age of sixty-five.⁹⁶ Furthermore, Judges enjoyed criminal immunity for any misconduct unless there was 2/3 majority vote permission of the Council a criminal investigation to be initiated,⁹⁷ as well as, civil immunity for liability of misconduct in office.⁹⁸ Later, through several amendments of the Constitution, requirements for acquiring tenure were increased and the criminal immunity of judges was

/en/content/6704/population-districts-municipalities-place-residence-and-sex; David S. Clark, *The Relative Importance of Judiciaries in Distinct Legal Traditions*, in *LAW AND JUSTICE IN A MULTISTATE WORLD: ESSAYS IN HONOR OF ARTHUR T. VON MEHREN* 609, 611 (James A. R. Nafziger & Symeon C. Symeonides eds., Transnational Publishers 2002) ("As of Jan. 20, 2011, Bulgaria had 2,285 judges while its population was 7,245,677 or thirty-one judges per 100,000 people. For comparison, only about ten years earlier Germany had twenty-seven judges per 100,000 people while the United States had nine judges.").

91. A civil trial judge of the Sofia City Court, the busiest of all district courts nationwide, has a docket of about 200-250 cases and she receives around 200 new cases each year along with about ninety interlocutory appeal motions against procedural orders of judges from the Sofia Regional Court.

92. *Judicial Reform Index for Bulgaria*, *supra* note 39, at 63 (2006).

93. Techniques for concentrating the trial are used rarely, few judges refer to ADR (mainly mediation,) most judges have poor settlement culture. All these combined with insufficient number of court rooms and little use of default and summary judgments bring delays in adjudicating cases as well as writing judgments.

94. The fact that delay has been the most prevalent sanction might be a sign that the system does not pay attention to other abuses but it might also illustrate that some judges have poor working ethics.

95. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 43 (2002); *Judicial Reform Index for Bulgaria*, *supra* note 49, at 38-39 (2004).

96. Const. of the Republic of Bulg. SG No. 69/ 2008, art. 129(3), as amended, SG No. 85/ 2003.

97. Const. of the Republic of Bulg. SG No. 69/ 2008, art. 132, as amended, SG No. 85/ 2003, 12/ 2007; *Zakon za Visshia Sudeben Suvet* [Sup. Jud. Council Act] art 13 (repealed SG No. 59/1994).

98. Const. of the Republic of Bulg. SG No. 69/ 2008, art. 132, as amended, SG No. 85/ 2003, 12/ 2007.

completely lifted.⁹⁹ Now for judges to acquire tenure they must have been in their office for five years and the Council decides whether to grant tenure to a judge upon her work has been positively evaluated by a Commission of the Council.¹⁰⁰ While judges do not generally perceive lifting immunity for criminal conduct as infringing their independence,¹⁰¹ it led to an increase in the number of investigated, indicted, and convicted judges.¹⁰²

c. Career Development

Career development of Bulgarian judges has undergone significant changes; similar to those described about initial selection and appointment of judges. Prior to 2006, promotion of judges depended mainly on the initiative of their chief judges,¹⁰³ followed by a decision of the Council – in many cases both were based on seniority.¹⁰⁴ Occasionally, judges felt some promotions were motivated through political, social, or other connections,¹⁰⁵ but in early 2000s a large number of judges left their office for political¹⁰⁶

99. Constitutional Amendment of 2003: Hearings on Parliament, (Sept. 3, 2003), <http://www.parliament.bg/bg/plenaryst/ns/1/ID/831>; Delpeuch Thierry & Vassileva Margarita, Contribution à une sociologie politique des entrepreneurs internationaux de transferts de réformes judiciaires, *L'année sociologique*, 59, 2009/2 *L'année sociologique* 371, available at http://www.cairn.info/article.php?ID_ARTICLE=A_NSO_092_0371.

100. Const. of the Republic of Bulg. SG No. 69/ 2008, art. 129(3), as amended, SG No. 85/ 2003; JSA, SG No. 69/2008, art. 207, 209, as amended SG No. 64/2007, 33/2009, 1/2011 (Bulg.).

101. *Judicial Reform Index for Bulgaria*, *supra* note 39, at 46 (2006).

102. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 46 (2013).

103. JSA, SG no. 64/2007 (repealed SG No.39/2006) (Bulg.); JSA, SG No. 39/2009, art. 127(g).

104. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 46 (2013).

105. *Id.*

106. There was no official lustration of judges in Bulgaria upon the fall of the Communist Regime compared to those in other Eastern European countries. Under § 5 of the Transitional and Final Provisions of the Constitution, however, if within three months of its establishment the Council did not find a lack of professional standing required, then the judge acquired tenure. Thus, in 1992 judges were removed by the Council finding that they did not have the professional standing required for being connected to the former Communist party (see Mirela Veselinova, *Bulgarskijat Konstitucionalizym – Realen ili Nominalen*, *Praven Svjat* (Oct. 18, 2013) http://www.legalworld.bg/32_928.bylgarskiiat-konstitucionalizym---realen-ili-nominalen.html; see also Parl., *Constitutional Amendment of 2003: Hearings on Parliament*, 39th Regular Parl. (Sept. 3, 2003) available at <http://www.parliament.bg/bg/plenaryst/ns/1/ID/831>.

and financial reasons.¹⁰⁷ The opening of new judgeships¹⁰⁸ opened quickly providing for quick promotions. The tension created by unjustified promotions was not so strong initially. Once the vacancies were filled and the judges needed to stay longer at the same position, the feelings of dissatisfaction of such promotions increased.

Upon 2006, changes have been adopted to improve the promotion process moving from one direction (promotion decisions determined mainly on results of oral and written legal technical exams)¹⁰⁹ to another (promotion based only on an evaluation by a Commission of the Council with limited administrative capacity).¹¹⁰ Today, the evaluation and oral legal technical exam both have equal value at the final ranking.¹¹¹ The public announcements for promotion competitions and the way the exam commissions are composed follow the rules for competitions for initial selection of judges.¹¹² Evaluation is done once in four years first by a panel of three judges randomly selected of a court of immediate higher level than the one of the judge evaluated, then endorsed by a permanent Commission of the Council, and finally approved by the Council itself. The panel evaluates legal knowledge and skills, working ethics, and organizational skills. They use data compiled about incoming and completed cases, disposition time, reversed judgments, continuing legal education (CLE) participation, brief evaluation by the chief judge, reports on the judge from the Inspectorate of the Council, information from the Ethical Committee of the court about the integrity of the judge, and personal observations.¹¹³

107. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 24 (2002).

108. While in 1992 according to MP Ljuben Kornezov there were about 1,000 judges nationwide (Parl., Constitutional Amendment of 2003: Hearings on Parliament, 39th Regular Parl) by 2011 they already were 2,285.

109. JSA, SG No. 69/2008 (repealed SG No. 64/2007) (Bulg.); JSA, SG No. 69/2008, art. 30(10), as amended SG No. 39/2006 (Bulg.).

110. *Id.* at art. 127(b), as amended SG No. 39/2006 (Bulg.).

111. JSA, SG No. 69/2008, arts. 188- 194 (Bulg.).

112. *Supra* IV.A.2.(c).

113. JSA, SG No. 69/2008, art. 196- 209 (Bulg.); Metodika za Atestirane na Sudia, Prokuror, Sledovatel Administrativen Rukovoditel i Zamestnik Administrativen Rukovoditel [Methodology for Evaluation of Judge, Prosecutor, Investigator, Chief Judge, Chief Prosecutor and Investigator as Well as Their Deputies], (Bulg.), adopted Nov. 28, 2011, (as amended July 26, 2013 and Mar. 12, 2014), http://www.vss.justice.bg/root/f/ upload/2/Metodika_atestirane-

Compared to the promotion procedure in existence before 2006, the present procedure is more elaborate and balances dispersing functions among evaluating judges and the Council using diverse sources of information about observable behavior. However, the procedure does not take attorney evaluations into account. It is questionable, however, whether it is wise to place equal value on the evaluation of the judge's four-year work and an oral legal technical exam lasting for about twenty minutes.

The procedure requires excellent planning and timely administration of the competitions for promotion and initial selection in order to fill the vacancies quickly. In reality, however, this is not so, resulting in the system adjusting by using large scale temporary reassignment of judges, at least in Sofia,¹¹⁴ of lower to higher courts and from less busy to busier courts. Reassignment creates great risks for the independence of the judges temporarily reassigned for several reasons: (1) judges reassigned to higher courts are compensated as higher court judges; (2) judges reassigned to another same level court usually would like to settle in the place of reassignment; and (3) both types of reassignment are believed to improve the chances the judge is reassigned when vying for promotion or transferring. These reasons might make reassigned judges unwilling to return to their original courts, which could intensify their natural feelings of fear and allegiance and increase their vulnerability to influences by the chief judges who decide the reassignment.¹¹⁵

2. *Disciplining Judges*

The independence of judges also depends on whether the system has implemented a fair and transparent process for sanctioning judicial misconduct. Bulgaria has gone through a long development of such sanctions. It started with a general ban against removing any tenured judge,¹¹⁶ but soon arrived at a state where even members of

2014.pdf.

114. In Sofia City Court out of 134 sitting judges 34 are temporally reassigned from the Regional Court of Sofia and from courts outside Sofia.

115. *Judicial Reform Index for Bulgaria*, *supra* note 49, at 3 (2013).

116. JSA, SG No. 29/2004, art. 169(2) (repealed SG No. 64/2007) (Bulg.).

the Council could be removed in cases of serious misconduct.¹¹⁷

At present, a judge can be disciplined for: (1) not abiding by the procedural deadlines and delaying adjudication, (2) breaching the Code of Ethical Conduct, (3) compromising the reputation of the Justice System, or (4) not fulfilling other duties.¹¹⁸ Disciplinary procedures may be initiated by chief the judge of the court where the judge sits, or of a higher court, the Inspectorate of the Council, 1/5 of the members of the Council, or the Minister of Justice.¹¹⁹ Chief Judges impose lighter sanctions for minor offences and they send their orders to the Council, who within a month, may reverse or confirm them.¹²⁰ Randomly assigned panels of three Council Members investigate. However, with more serious offenses, the judge will make propositions to the Council, then the Council decides whether or not to discipline the judge.¹²¹ The decision of the Council is subject to *de novo* appeal before three-Justice panel of the Supreme Administrative Court (SAC) which decision could be finally reviewed by five-Justice panel of SAC.¹²²

The disciplinary procedure is very close to a regular court procedure, except it is not public in its initial phase.¹²³ The frequency of such procedures have varied since 1999. They went as low as two in 2004¹²⁴ and as high as fifty-one in 2009.¹²⁵ Since then, about fifteen disciplinary procedures have been started each year on average.¹²⁶ Most disciplinary procedures were initiated against

117. JSA, SG No. 103/2009, art. 307(2) (Bulg.).

118. JSA, SG No. 69/2008, art. 307(4) (Bulg.).

119. *Id.* art. 312(1) (Bulg.).

120. *Id.* art. 314(1)-(3) (Bulg.).

121. *Id.* arts. 316-320 (Bulg.).

122. *Id.* art. 323 (Bulg.).

123. *Id.* at art. 313(3) (Bulg.).

124. *The Activity of the Supreme Judicial Council in Disciplinary Proceedings Against Judges During 2004*, §III.1, <http://www.vss.justice.bg/page/view/1299>.

125. *Analysis of Disciplinary Practice of the Supreme Judicial Council in 2009*, §3, <http://www.vss.justice.bg/page/view/1292>.

126. *Analysis of Disciplinary Practice of the Supreme Judicial Council in 2010*, §1, <http://www.vss.justice.bg/page/view/1290>; *Report of the Disciplinary Commission of the Council for 2011*, §1, http://www.vss.justice.bg/root/f/upload/1/otcet-disc_pr-2011.pdf; *Report of the Disciplinary Commission of the Council for 2012*, §1, http://www.vss.justice.bg/root/f/upload/1/report_kdp_2012.pdf; *Report of the Disciplinary Commission of the Council for 2013*, §II.1, http://www.vss.justice.bg/root/f/upload/1/report_kdp_2013.pdf; *Report of the Disciplinary Commission of the Council for 2014*, §II.1, available at

judges of regional and district courts but there were such procedures also against chief judges, court of appeals judges, justices, as well as members of the Council.¹²⁷ Since 2010, Chief Judges, Chief Prosecutors, and Investigators have issued on average forty-nine orders per year for imposing sanctions for minor disciplinary offenses.¹²⁸

There are concerns about the arbitrary and inconsistent sanctioning for similar offenses.¹²⁹ There is no publication of SAC opinions on disciplinary cases of judges, although that might help resolving inconsistencies. Additionally, it could also be used as case material to be studied at judges' training.

3. Does Bulgaria's Justice System Assures Its Judges Are Independent in Fulfilling Their Judicial Duties?

The Justice System in Bulgaria has provided significantly stable offices to its judges, fairly good training, and prospects for judicial promotion. It also has developed relatively fair and transparent disciplinary procedures, which are now in use. The promotion process would be fairly well-balanced if not for the deficiencies of planning, the untimely administration of competitions, and the high value given to the legal technical exam. Influences like fear, frustration, and maybe allegiance, affect judges when disciplinary measures are not taken. When disciplinary measures are delayed, it leads to poor management skills of judges.

http://www.vss.justice.bg/root/f/upload/1/report_kdp_2014.pdf.

127. *Supra*, note 127-129.

128. *Analysis of Disciplinary Practice of the Supreme Judicial Council in 2010, supra* note 129, at §4-5; *Report of the Disciplinary Commission of the Council for 2011, supra* note 129, at §4-5; *Report of the Disciplinary Commission of the Council for 2012, supra* note 129, at §3-4; *Report of the Disciplinary Commission of the Council for 2013, supra* note 129, at §II.3-4; *Report of the Disciplinary Commission of the Council for 2014, supra* note 129, at §II.3-4.

129. *Judicial Reform Review, supra* note 49, at 82 (2013).

V. Conclusion – Are Bulgarian Judges Independent?

To answer this question, it might be beneficial to compare the facts of the *Kokinov* case from 2013 to those of the *Texim* case from 1971. On April 15, 2013, Nikolay Kokinov, Chief Prosecutor of Sofia City Prosecutor's Office¹³⁰ attended a meeting at the house of the Prime Minister Borisov, where the former Minister of Agriculture Najdenov was also present. During the meeting Kokinov freely discussed a criminal investigation his Office was conducting against Minister Najdenov and another possible investigation of high-level governmental officials. Kokinov also asked Prime Minister Borisov to help his promotion. After this discussion had been reported in the media, the Council decided Kokinov's behavior violated the Code of Ethical Conduct and removed him from office. The decision was affirmed by a five-justice panel of SAC.¹³¹

Although the *Kokinov* case involved a prosecutor, while the *Texim* case involved a judge, the parallels are quite strong; in the Bulgarian system, prosecutors and judges enjoy the same guarantees and requirements regarding independence, and face the same temptations. Kokinov's free discussion of a pending investigation with the person investigated and a third person, was what Chief Judge Bajchev's superiors expected from him, but not what happened. While both cases illustrate a pervasive culture of influencing decision takers in the Justice System, there are nuances that also reveal some changes.

While the *Texim* case is a demonstration how a system using pressure directly intensified the fear and frustration within the decision taker, the *Kokinov* case illustrates a more refined tool to infringe independence – through failures of the character such as vanity and maybe greed. To some extent, the *Kokinov* case proves

130. Nikolay Kokinov was born in 1969, graduated from law school in 1993, in 1994 he became junior prosecutor, in 1996 prosecutor at Sofia Regional Prosecutors Office, in 1999 prosecutor at Sofia City Prosecutors Office, in 2004 Deputy Chief Prosecutor, and in 2006 Chief Prosecutor of the Sofia City Prosecutors Office (CV is on file with the author and has the Council filing register number 96-02-053/08.11.2011).

131. *Opinion of Five-Justice Panel of the Supreme Administrative Court*, No. 8599/2014 on Administrative Case No. 1406/2014, <http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/c043ba800a9d1b2dc2257d00003f466a?OpenDocument>.

that independence is a state of mind and a personal choice of the decision-maker. The *Kokinov* case is also an example, however, of how independence could be easily compromised after a fifteen-year period during which bad practices inherited from the previous regime had developed. This is because (1) judges' experienced almost no accountability; (2) procedures for initial selection, appointment, and promotion were wide open to influence; (3) the Council had little administrative capacity; (4) trainings were unavailable; and (5) the Code of Ethical Conduct had been not adopted. While measures for improvement in all these areas have been implemented, it will take more time for Bulgarians to enjoy the benefits of them. Definitely, the Council's approach in the *Kokinov* case is an omen of hope and a sign that these measures for improvement are beginning to produce results.
